Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *The Estate of R. R. v Minister of Employment and Social Development and L. D.*, 2019 SST 681

Tribunal File Number: GP-18-1281

BETWEEN:

The Estate of R. R.

Appellant

and

Minister of Employment and Social Development

Respondent

and

L. D.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: François Guérin

HEARD ON: July 2, 2019

DATE OF DECISION: August 6, 2019

Canada

REASONS AND DECISION

OVERVIEW

[1] The deceased applied for the Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OAS Act). The GIS benefit was paid to the deceased as a single person effective May 2010, which is the month following the death of his spouse.[1]

[2] The Added Party applied for an Old Age Security (OAS) pension[2] and claimed in the application that she was the deceased's common-law partner. Because of this, the Respondent carried out a more in-depth investigation into the marital status of the deceased and the Added Party. In the course of that investigation, the deceased and the Added Party also a signed Statutory Declaration of Common-law Union sworn before a commissioner for oaths,[3] indicating that they started living together on November 15, 2011.

[3] In the Respondent's decision letter,[4] the deceased's estate was asked to repay a GIS overpayment of $2,678.43 for the period of July 2013 to January 2017, the month the deceased passed away. That amount was then adjusted to $3,855.01 because of income the Added Party reported to the Canada Revenue Agency (CRA).[5]

[4] On June 7, 2017, the Appellant requested a reconsideration of that decision,[6] and, on February 27, 2018, the Respondent upheld its final decision.[7] The Appellant appealed that decision to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTER

[5] Representatives for the estate were the deceased's daughter (first representative) and the deceased's son (second representative).

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[1] GD2-15.
[2] GD4-14.
[3] GD2-30.
[4] GD2-22 to 23.
[5] GD4-7.
[6] GD2-5.
[7] GD2-3 to 4.

[6] The hearing was conducted in French with a French-to-English and English-to-French interpreter because the representatives for the estate spoke in French and the Added Party spoke in English.

[7] To shed light on the precise day the deceased and the Added Party started living together, the Tribunal gave the Added Party three weeks—that is, until July 23, 2019—to submit a photocopy of her Québec driver's licence as well as any documents she deemed relevant to support her conjugal relationship with the deceased. In the interest of fairness, since the representatives for the estate indicated during the hearing that they did not know that she could submit additional documents to the Tribunal, the Tribunal also allowed the estate to do the same. However, by July 26, 2019, the Tribunal had still not received any documents from the Appellant or the Added Party.

ISSUE

[8] Were the deceased and the Added Party common-law partners within the meaning of the OAS Act from December 2012 to January 27, 2017, when the deceased passed away?

ACT AND REGULATIONS

[9] The GIS provides a supplement to the base OAS pension and is paid to low-income seniors. Therefore, the GIS depends on income and is calculated based on the past year's income (base calendar year). The OAS is adjusted when tax returns are filed if the reported income or marital status has changed.

[10] According to section 2 of the OAS Act, a common-law partner, "in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year. For greater certainty, in the case of an individual's death, the 'relevant time' means the time of the individual's death."

[11] Section 11 of the OAS Act provides for the payment of the GIS to eligible pensioners based on the provisions set out in the Act and its regulations. The GIS may not be paid to a

pensioner for a month in any payment period unless an application for payment has been made by the pensioner. The pensioner must apply each year to qualify.

[12] According to sections 12 and 13 of the OAS Act, the income of pensioners is based on their income for the base calendar year. With conjugal partners, the income of the two partners is used to calculate the GIS that is to be paid to each of them.

[13] Section 15(1) stipulates that an applicant must state whether they have a spouse or common-law partner in accordance with the OAS Act and its regulations.

[14] Section 18 of the OAS Act sets out the procedure to follow when the actual income is different from the shown income. If the actual income exceeds the shown income, any amount by which the supplement paid to the applicant for months in the payment period exceeds the supplement that would have been paid to the applicant for those months if the shown income had been equal to the actual income must be deducted and retained out of any subsequent payments of supplement or pension made to the applicant, in any manner that may be prescribed.

ANALYSIS

Were the deceased and the Added Party common-law partners within the meaning of the OAS Act from December 2012 to January 27, 2017, when the deceased passed away?

[15] The Added Party stated that she met the deceased online around 2009, although she is not sure of the exact date, and that they were seeing each other online in the morning when she returned from work. The deceased invited her to visit him in X, but she was not able to go there because she was working. As a result, the deceased went to visit her at her home in Alberta around January 2010. She then went to visit him in X before she moved in with him.

[16] The second representative for the estate testified that the meeting online in late 2010 and travelling to Alberta around January 2011 happened after his mother passed away in April 2010 and that the deceased was in a relationship with his mother at that time.

[17] After the deceased passed away in January 2017, the Added Party confirmed that she went back to live in X in March or April 2017 after a short stay in X because of strained relations with the deceased's family. The representatives for the estate confirmed this.

[18] The first representative for the estate testified that the Added Party was not her father's common-law partner. The deceased asked the Added Party only to clean, run errands, help him get around, and look after his well-being. The Added Party was paid in cash, and they did not share the same room; the Added Party had her own room.

[19] The first representative for the estate believes that the Added Party was only after money. For example, on the day of the deceased's death, the Added Party went to the bank to withdraw money from the deceased's account. In addition, jewellery belonging to the first representative's mother and father had gone missing.

[20] Regarding the Statutory Declaration of Common-law Union sworn before a commissioner for oaths,[8] that document was signed on January 19, 2017, and the first representative for the estate argues that the deceased was not in a condition to sign it. The first representative for the estate also questions the deceased's signature on that document, comparing it with the deceased's signature on his driver's licence and bank card.[9]

[21] The Tribunal has weighed that information, but the estate has not provided any medical report stating the deceased's mental or physical condition.

[22] Furthermore, the first representative for the estate has said that she has a photograph that was taken on June 29, 2013, at 9:01 a.m. showing the deceased with a woman by the name of C. B. who was the deceased's girlfriend.

[23] The Tribunal has weighed that information, but a one-time photograph showing the deceased with another person without any testimony from credible witnesses to support it cannot

[8] GD2-30.
[9] GD5-5.

be evidence that the deceased was not the Added Party's common-law partner on the day that photograph was taken.

[24] The second representative for the estate also maintains that the information on the Statutory Declaration of Common-law Union is incorrect because, in November 2011, the deceased lived with C. B., who, it was later made clear, was Ms. D. The second representative for the estate also says that three witnesses can confirm the information supporting the estate's account.

[25] The Tribunal has weighed the information the second representative for the estate shared, but the Tribunal notes that the estate has chosen not to support that information with statements from those witnesses who might have confirmed the information regarding the deceased's romantic relationship with Ms. D. and/or the Added Party. After the hearing, the Tribunal gave the estate three weeks to send it those testimonies. However, the estate did not do so.

[26] The Added Party testified that she moved to X in November or December 2012. She remembers the event because it was just before Christmas, but she is not sure of the exact date. The Tribunal asked the Added Party three times to confirm that it was indeed in November or December 2012; she confirmed this. This differs from the information on the Statutory Declaration of Common-law Union, which indicates that the common-law union began on November 15, 2011.

[27] The estate also maintains that there is a police report confirming an altercation between the Added Party and Ms. D. However, the second representative does not indicate why that document is significant and supports the estate's position other than it confirms that the altercation took place. At the hearing, the estate was not able to indicate the approximate date of that altercation. Moreover, the estate chose not to submit that document to the Tribunal when they had been given the time to do so.

[28] The Added Party testified that a complaint had indeed been filed against C. D. following an attack on the Added Party shortly after her final arrival in X, which caused her a lot of stress. The attack took place after the Added Party moved to X. The deceased assured the Added Party that it would not happen again. The Added Party stated that the deceased had informed her that

he and C. D. had had an affair but that they were just friends, which explained the reason for the altercation. The Added Party said that she had found a document showing that the altercation allegedly took place on Friday, July 15, 2012. That information contradicts the statements the Added Party gave throughout the hearing during which she repeatedly confirmed that she had moved the X in November or December 2012. In the absence of more evidence supporting that event, date, situation, and the like, and despite the fact that the Appellant and the Added Party were given three weeks after the hearing to provide additional documents, the Tribunal prefers to disregard this.

[29] The estate also maintains that it provided documentation showing that the deceased was the only one in charge of paying the bills for the upkeep of the house. This documentation included the March 2017 Telus bill, the March 2017 Hydro-Québec bill, the April 2017 Desjardins bank statement, and the March 2017 Ultramar heating bill,[10] which were all exclusively in the deceased's name. The estate maintains that the Added Party did not contribute to those expenses.

[30] The Added Party stated that she went to spend roughly a month in Edmonton to attend to personal matters and about six months in Jamaica—a trip that the estate alleges was paid for by the deceased. The information the estate shared about the deceased having supposedly paid for the Added Party's trip to Jamaica seems to support that the deceased and the Added Party were in a conjugal relationship, since it is unlikely that an employer would pay for such a trip for a mere companion.

[31] The Added Party stated that, after she moved to X, the deceased took her to X to get a Québec driver's licence so that she could drive the deceased to his appointments. However, she does not recall the exact date. During the hearing, the Added Party said that she had recently found that driver's licence among her boxes. The Tribunal gave her three weeks to send it a copy. However, the Added Party did not do so.

[32] The Added Party stated that the romantic relationship between her and the deceased began when she was still living in Alberta and that they were seeing each other through video

[10] GD2-18 to 21.

calls. The Added Party stated that she gets a pension from her employer that she was receiving when she lived in X. She had her own bank account. The deceased did not pay her. Instead, she helped with the bills including the telephone bill and groceries.

[33] The second representative for the estate confirmed that the funeral home wrote the deceased's obituary.[11] The second representative for the estate stated that the funeral home asked whether the Added Party was the deceased's common-law partner and that the deceased's children said no. As a result, the home suggested writing [translation] "girlfriend" rather than common-law partner in the funeral notice.

[34] The Tribunal gives considerable weight to the obituary that describes the relationship between the deceased and the Added Party as that of [translation] "boyfriend and girlfriend" while they lived under the same roof. Other terms could have been used to define the relationship between the deceased and the Added Party if their relationship was not a romantic one.

[35] Furthermore, the Tribunal finds it odd that the deceased, residing in X, had a companion come from Alberta instead of hiring someone local, if the only requirements of employment were to help clean, run errands, help the deceased get around, and look after his well-being. The Tribunal considers that the situation is evidence of a special and privileged relationship between the two people.

[36] The deceased and the Added Party also signed a Statutory Declaration of Common-law Union sworn before a commissioner for oaths,[12] indicating that they started living together on November 15, 2011. The Tribunal gives a lot of weight to that declaration in its analysis, since the deceased and Added Party went to a Service Canada office and signed the document before a commissioner for oaths. Furthermore, the estate testified that the deceased had passed away following a heart attack, which does not call into question the deceased's cognitive abilities or sound judgement, even if he went to hospital around that time for lung problems.

[37] At the appeal hearing, the Added Party stated several times that she moved to X in November or December 2012 but definitely before Christmas 2012. She also said that she went

[11] GD2-29.
[12] GD2-30.

to X before moving there permanently. In addition, she stated that her furniture arrived in X around November 2012. The Tribunal also understands that a faulty recollection may arise and, in light of all the testimonies heard, the Added Party's testimony, and the sequence of events shared by the estate, the deceased and the Added Party would have instead started living together on November 15, 2012, contrary to what is indicated on the declaration. Therefore, the Tribunal prefers the date given during the testimonies as the date they started living together—that being November 15, 2012.

[38] The Respondent also provided a history of addresses the Added Party reported to Service Canada.[13] According to that report, for the Canada Revenue Agency (CRA), the Added Party's actual home address in X was effective only April 30, 2015, and this ended on May 22, 2015, when her address became that of the X company in Alberta. Regarding the OAS, the information is unreliable because some of the information's validity end dates predate the validity start date of the Added Party's X address. Regarding the Canada Pension Plan (CPP), the effective date in X started March 10, 2015, and ended February 24, 2017. At the hearing, the Added Party stated that some of her mail had gone missing or had not made it to her X residence and that is why she had given her sister's address in Alberta. Furthermore, her 2014 home address in Alberta, when she lived in X, was that of a bankruptcy trustee related to a past bankruptcy. The Tribunal finds these to be reasonable explanations and cannot therefore rely on the dates given in the address history.

[39] According to section 2 of the OAS Act, a common-law partner, "in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year." Therefore, what matters, according to the Act, is not when the relationship began or when the individuals moved in together to live under the same roof, but rather the one-year point after the two people started cohabiting in a conjugal relationship. Therefore, the Tribunal finds that the deceased and the Added Party cohabited in X from mid-November 2012 until the deceased passed away in January 2017. As a result, the deceased and the Added Party were common-law

[13] GD2-32 to 33.

partners within the meaning of the OAS Act from December 2013 until the deceased passed away in January 2017.

CONCLUSION

[40] The Tribunal has carefully considered the written and oral information that the representatives for the estate and the Added Party have shared. Nevertheless, the Tribunal must consider the Statutory Declaration of Common-law Union that the deceased signed when he was alive before a commissioner for oaths and in which he declared he was in a common-law union with the Added Party. However, the Tribunal has chosen to accept the Added Party's testimony about the date she and the deceased started living together, even though that date is different from the one written on the Statutory Declaration of Common-law Union.

[41] The Tribunal finds that the deceased and the Added Party were indeed in a common-law union according to the OAS Act but that their common-law union began in December 2013 and continued until the deceased passed away, as the Added Party testified.

[42] The appeal is allowed in part because the date the deceased and the Added Party started living together was changed from November 15, 2011, as written on the Statutory Declaration of Common-law Union, to November 15, 2012.

François Guérin
Member, General Division – Income Security